

OGC 75-3395
18 September 1975

MEMORANDUM FOR: DDO, Attn
DDI, Attn
DDS&T, A
DDA, Attn
IG, Attn:
Comptroll
OLC, Attn

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SUBJECT : Aspects of Intelligence Sources and Methods

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1. Attached is the final list of the Aspects of Intelligence Sources and Methods. Hopefully I have incorporated all the thoughts each of you has given me pursuant to your initial responses and your recent review of the first draft of the list. In the case of the Science and Technology and the Administration Directorates, I have also sent the list to those offices who participated directly in the drafting of the Aspects. I have asked that they make their comments to Messrs. [redacted] respectively.

2. We have tried to organize the Aspects into broad subject groups. While in most cases this is possible, there is some overlap in that some Aspects relate to more than one of the groups. I hope such grouping will facilitate your review. Grouping the Aspects required renumbering them. I have attached cross-reference lists showing the old and new numbers.

3. If you find the Aspects offer satisfactory coverage for your activities, I ask that you concur on the attached sheet. As each of the Deputy Directors and Heads of Independent Offices specifically delegated their responsibility in this regard to you, your concurrence is sufficient for me. I will leave it to your judgment as to the degree you want to involve your Deputy or Head of Office. I would appreciate your concurrence by 19 September. If you have comments or problems please call me as soon as possible so those can be resolved prior to the date of our going forward to the Director.

4. It is our intention that the Director will adopt this listing, pursuant to law, as his determination of the Aspects of Intelligence Sources and Methods requiring protection from unauthorized disclosure in accordance with the responsibilities assigned to him by Section 102(d)(3) of the National Security Act of 1947. Such a determination can then be considered for use in injunctive cases such as Marchetti and in Freedom of Information cases in conjunction with exemption 3 of the Freedom of Information Act (FOIA). The determination is not associated with the classification system as currently defined and prescribed in Executive Order 11652. As a practical matter, the listing will, in effect, become a definition of what constitutes intelligence sources and methods.

5. In this regard, the Agency secrecy agreement will have to be modified in order that a separate contractual agreement will protect intelligence sources and methods from unauthorized disclosure. This separate protection will be in addition to the current secrecy agreement regarding the protection of classified information.

✓ 6. Documents containing Aspects of Intelligence Sources and Methods will have to be marked indicating same. This, of course, is independent of any markings because of classification pursuant to E.O. 11652. The intelligence sources and methods marking might take a form such as:

WARNING

This document contains information regarding intelligence sources and methods which is subject to 50 U.S.C. 403(d)(3) and 50 U.S.C. 403g. Pursuant to the statutory responsibility of the Director of Central Intelligence contained therein, this information may not be disclosed to an unauthorized party without the express authorization of the Director or his duly authorized representative. This determination made by _____

✓ 7. After adoption by the Director, regulations will have to be promulgated to establish procedures regarding the Director's determination. Included therein should be, among other things, procedures for review and update of the list of Aspects and the consequences of disregard or violation of the procedures.

8. As many of you know, the general philosophy in drafting the Aspects has been to include both general and specific Aspects which may have overlapping application. If the general Aspect can be used in a specific case, we will avoid disclosing specifics; however, in many cases the particular office concerned has suggested including a more specific Aspect in order to have an alternative should the specific case dictate its use. Obviously, there is wide latitude here. Lacking further guidance as to what standards courts will apply in either an injunctive or FOIA case, it is my view that at this time the Agency will have to depend to a large extent on the views of the office within the Agency that has primary responsibility in the area that is the subject of the particular Aspect, together with legal advice from this Office. There have been several suggestions regarding merging certain Aspects. I have tended to separate related Aspects so that when we are required to use one of them, we disclose as little of our operations as possible. Obviously, this separation can be only a matter of degree but as the Aspects as written seem to satisfy the components that originally suggested them, I am somewhat wary of major modifications thereto.

9. The list of Aspects represents considerable effort by all components of the Agency. This Office believes that the product of the resultant list was certainly worth the effort. It is our opinion that the implementation of an intelligence sources and methods protective system will offer significant protection of assets of this Agency that has heretofore gone unrealized. We are very appreciative of all the efforts that each of you has made to this undertaking.

Assistant General Counsel

Attachment

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Concur in the list of Aspects of Intelligence Sources and Methods of the Central Intelligence Agency that Require Protection from Unauthorized Disclosure, as described in the OGC memorandum by [redacted] Assistant General Counsel, dated 18 September 1975.

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Deputy Director for Operations

Date

Deputy Director for Intelligence

Date

DD/Science and Technology

Date

Deputy Director for Administration

Date

Inspector General

Date

Comptroller

Date

Legislative Counsel

Date

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MEMORANDUM FOR:

PVN/R (Hold for EWP)

FYI.

I have been working on this with [redacted] for some time. Although the memo asks for a concurrence (and I have concurred and sent it on its way), the list of "aspects" can and probably will be modified before it is implemented by means of a new regulation.

The list consists of sources and methods that must be protected from unauthorized disclosure. Protection is not meant to be mandatory--it is at the discretion of the DCI and his designated representatives. There are, therefore, some "aspects" that in practice will seldom need protection and can in most cases be made public. The tricky part will be the drafting of a regulation that allows us this discretion and yet will hold up in court.

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To: [redacted]

where does
this stand?

Date 7 October 1975

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